IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 1283 (MS) OF 2003

Ram Ashrey .....Petitioner.

Versus

Additional District Judge,
Fast Track Court, Court-V,
Dehradun and another. .....Respondents.

Hon'ble Rajesh Tandon, J.

By the impugned order, the application under Section 5 of Limitation Act has been rejected.

Briefly stated, the Suit was filed by Sri Govind Prasad against Sri Ram Ashrey praying for eviction of the premises mentioned as Property No. 133/351, Jakhan, Rajpur Road, Dehradun. The suit was decreed on 17th December, 1999. The appeal was preferred by the defendant being Misc. Appeal No. 654 of 2002 along with an application under Section 5 of the Limitation Act. The Appellate Court has rejected the Appeal under Section 5 of the Limitation Act and hence, consequently appeal was also dismissed.

A perusal of the application shows that the petitioner was aged about 70 years of age and he could not file appeal due to his old age and poverty. He has also stated that the dispute is between the family members and as such he was misled and he could not file the appeal.

A perusal of the order shows that the learned Judge has not applied his mind towards the fact that it was a family dispute and the parties should have been allowed the hearing and the matter should have been decided on merits.

The Apex Court in the case N. Balakrishnan v. M. Krishnamurthy Supreme Court & Full bench Rent Cases, 1998 page 427 held as under:

"Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have

incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

In view of the law laid down in Balkrishnan's case reported in 1998 Supreme Court Full Bench case, the Writ Petition is allowed. Order dated 5th August, 2003 is quashed. The Appellate Authority is directed to decide the appeal within a period of four months from the filing of the certified copy of the order.

Both the parties have undertaken that they will not seek any adjournment.

In view of the aforesaid fact, the Appellate Court is directed to decide the case on merits.

The Writ Petition is allowed.

(RAJESH TANDON, J.)

13.10.2004

P.S.R.